

APPENDIX Ic REVISED VERSION OF RSA 162-H

CHAPTER 162-H

ENERGY FACILITY EVALUATION, SITING, CONSTRUCTION AND OPERATIONS

162-H:1 Declaration of Purpose.

I. The legislature recognizes that the selection of sites for energy facilities will have a significant impact upon the welfare of the population, the economic growth of the state and the environment of the state. The legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the possible need for new energy facilities in New Hampshire; that undue delay in construction of any needed facilities be avoided; and that the state insure that the construction and operation of energy facilities is treated as a significant aspect of land-use planning in which all environmental, economic and technical issues are resolved in an integrated fashion. The legislature, therefore, hereby establishes a procedure for the review, approval, monitoring and enforcement of compliance in the planning, siting, construction and operation of energy facilities. The legislature also recognizes that it has a broad responsibility to provide both economic and environmental protection for its coastal and estuarine waters and the adjoining land areas. The legislature therefore declares it to be its policy that any offshore facility (other than pipelines) shall be located so as to at least comply with the policies and guidelines of the Federal Environmental Protection Agency; and that this policy may be relaxed only if it is shown by clear and convincing evidence that there are compelling technological or economic reasons for doing so, that no feasible alternative exists, and that there will be no substantial environmental risk.

II. The legislature also finds that the present and predicted growth in electric power demands in the state of New Hampshire requires the development of a procedure for the selection and utilization of sites for generating facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state. The legislature, accordingly, finds that the public interest requires that it is essential to maintain a balance between the environment and the need for new power sources; that electric power supplies must be constructed on a timely basis; that in order to avoid undue delay in construction of needed facilities and to provide full and timely consideration of environmental consequences, all electric entities in the state should be required to engage in adequate

long-range planning and provide full and complete disclosure to the public of such plans; that a certifying body be established for the preconstruction review of bulk power supply facilities; that the siting of bulk power plants and high voltage transmission lines should be treated as a significant aspect of land-use planning in which all environmental, economic and technical issues should be resolved in an integrated fashion so as to assure the state an adequate and reliable supply of electric power in conformance with sound environmental utilization. The legislature, therefore, hereby establishes a procedure for the planning, siting, and construction of bulk power supply facilities.

162-H:2 Definitions.

I. "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site of the proposed energy facility, but does not include land surveying, optioning temporary use of the land for public recreation uses or necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

II. "Energy" means power, including mechanical power or useful heat, derived from any resource, including, but not limited to, oil, coal, and gas.

III. "Energy facility" means any industrial structure, other than bulk power supply facilities as defined herein that may be used substantially to extract, produce, manufacture, transport or refine sources of energy, and means also such ancillary facilities as may be used or useful in transporting, storing or otherwise providing for the raw materials or products of any such industrial structure; without limiting the generality of the foregoing, such industrial structures include oil refineries, plants for processing liquefied natural gas, and plants for coal conversion; further without limiting the generality of the foregoing, such ancillary facilities include onshore and offshore loading and unloading facilities, pipelines, and storage tanks, or any other facilities which the petitioner requests and the committee or commission agrees, or which the committee or commission determines, requires a certificate.

IV. "Bulk power supply facilities" means:

(a) Electric generating station equipment and associated facilities designed for or capable of operation at any capacity of 30 megawatts or more, or electric generating station equipment and associated equipment which the petitioner requests and the committee or commission agrees, or which the committee or commission determines, should require a certificate.

(b) An electric transmission line of design rating of 100 kilovolts or more, associated with a generating facility outlined in (a), over a route not already occupied by a transmission line or lines;

(c) An electric transmission line of a design rating in excess of 100 kilovolts that is in excess of 10 miles in length over a route not already occupied by a transmission line, or an electric transmission line which a petitioner requests and the committee or commission agrees, or which the committee or commission determines, should require a certificate.

(d) A gas plant, equipment and associated facilities designed to use any, or a combination of natural gas, propane gas and liquefied natural gas, which store on site a quantity to provide seven (7) days of continuous operation at a rate equivalent to the energy requirements of a 30 megawatt electric generating station and its associated facilities, or any such gas facility which a petitioner requests and the committee or commission agrees, or which the committee or commission determines, should require a certificate.

V. "Person" means any individual, group, firm, partnership, corporation, cooperative, municipality, political subdivision, government agency or other organization.

VI. The words "public utility" or "utility" means any electric utility engaged in the production, distribution, sale, delivery or furnishing of electricity, including municipalities, cooperatives, regulated electric companies, agencies or any combination thereof.

VII. "Acceptance" means the date at which the committee finds that the application is adequate for filing.

VIII. "Receipt" means the date at which the application is first submitted to the committee.

162-H:3 Site Evaluation Committee.

The site evaluation committee shall consist of the commissioner of the department of environmental services, the director, division of water supply and pollution control, the commissioner of the department of resources and economic development, the director of the division of public health services, the executive director of the fish and game department, the director of the office of state planning, the director of the division of water resources, the director of state parks, the director of forests and lands, the director of the division of air resources, the director of the governor's energy office, the commissioner of the department of transportation, and the commissioners and chief engineer of the public utilities commission. The commissioner of the department of environmental

services shall be chairman of the committee, and the chairman of the public utilities commission shall be vice-chairman. Notwithstanding any other agency authority to the contrary, no member may delegate a voting right to others.

162-H:4 Powers of the Committee

I. The committee shall have the authority and responsibility for:

(a) Issuing any certificate hereunder in the case of an energy facility, or forwarding its findings to the commission in the case of a bulk power supply facility;

(b) The determination of the terms and conditions of any certificate or findings issued hereunder, subject to RSA 162-H:10;

(c) The monitoring of the construction and operation of any energy facility granted a certificate hereunder;

(d) The enforcement of the terms and conditions of any certificate issued hereunder;

II. The committee shall hold hearings as required by this chapter and such additional hearings as it deems necessary and appropriate.

III. The committee may delegate the authority to monitor the construction or operation of any energy facility granted a certificate hereunder to such state agency or official represented on the committee as it deems appropriate, but, subject to RSA 162-H:10, it may not delegate authority to hold hearings, issue certificates, determine the terms and conditions of a certificate, or enforce a certificate. Any authorized representative or delegate of the committee shall have a right of entry onto the premises of any part of the energy facility to ascertain if the facility is being constructed or operated in continuing compliance with the terms and conditions of the certificate. During normal hours of business administration and on the premises of the facility, such a representative or delegate shall also have a right to inspect such records of the certificate-holder as are relevant to the terms or conditions of the certificate.

IV. In cases where the committee determines that other existing statutes provide adequate protection of the objectives of RSA 162-H:1, the committee may, within 60 days of receipt of the petition, exempt the applicant from the approval and certificate provisions of this chapter. The committee shall adopt rules under RSA 541-A specifying the criteria under which an exemption may be granted.

I. No person shall commence to construct any bulk power facility within the state unless it has obtained a certificate of site and facility, with respect to those facilities, issued by the public utilities commission. Such facilities shall be constructed, operated and maintained in accordance with the terms of the certificate. Such certificates are required for sizable additions to existing facilities as defined by the commission.

II. No person shall commence construction of an energy facility within the state or operate such a facility without a certificate of site and facility from the site evaluation committee. Such a certificate may not be transferred or assigned without the approval of the committee.

III. No certificate is required for facilities already under construction or in operation, but such certificates are required for changes or additions to such facilities.

IV. Any proposed facility which has one or more permit application(s) pending before any state agency on the effective date of this chapter, shall be exempt from certification hereunder. Said application(s) shall be governed by the applicable laws, rules and regulations of such agencies. Notwithstanding the foregoing, a facility may request the SEC to assume jurisdiction and in the event that the SEC agrees to assert jurisdiction, said facility shall be subject to the provisions of this chapter.

I. Upon receipt of an application, the committee shall immediately forward to each of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, a copy of such parts of the application as are relevant to its jurisdiction. Upon receipt of such a copy, each of such other state agencies shall immediately conduct a preliminary review as described in RSA 162-H:7, III.

II. Upon receipt of an application, the committee shall immediately conduct a preliminary review thereof to ascertain if it contains sufficient information to carry out the purposes of this chapter. The committee shall require such information as it deems necessary to accompany such application.

III. The committee shall decide whether or not to accept the application for filing within 60 days of receipt.

IV. Within 30 days after the acceptance of the application, the committee shall hold at least one public hearing in each county in which the proposed facility is to be located.

V. The committee shall adopt rules pursuant to RSA 541-A requiring progress reports from all participating state agencies within 5 months of the acceptance of the application, outlining draft permit conditions and specifying additional data requirements necessary to make a final decision.

VI. Each of any state agencies as have jurisdiction as detailed under RSA 162-H:7 shall make and submit to the committee a final decision on such parts of the application as relate to its jurisdiction not later than 8 months after it has received its copy of such parts.

VII. Within 9 months of the acceptance of an application, the committee shall either:

(a) issue or deny a certificate for the construction of an energy facility, or

(b) send its findings to the commission for a certificate for the construction of a bulk power facility. The commission shall either issue or deny that certificate within 10 months of the acceptance of the application.

162-H:7 Application for Certificate

I. All applications for a certificate to construct a bulk power supply facility shall be filed with the commission, and such plans may be subject to reasonable modification during the period of review. Applications shall include each individual agency's application forms. As a prerequisite to such filing, except for good cause shown as determined by the committee, an electric utility shall have complied with the provisions of RSA 162-H:19; and with respect to power plants and transmission line routes, except for good cause shown as determined by the committee, shall have complied with the requirement that the site selected is from among those sites in the electric utility's five year inventory of sites approved by the committee and that it will utilize the general transmission line routes identified in its long range plans.

II. All applications for a certificate to construct an energy facility shall be filed with the chairman of the site evaluation committee. Applications shall include each individual agency's application forms.

III. Upon receipt of such an application, the committee shall immediately conduct a preliminary review thereof to ascertain if it contains sufficient information in accordance with this paragraph. If the application does not contain such sufficient information, the committee shall, in writing, immediately notify the applicant of that fact and specify what information the applicant must supply.

IV. Each application shall contain sufficient information to satisfy the application requirements of each of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility, and shall include each individual agency's application forms. Upon receipt of an application, the committee shall immediately make copies thereof, the cost of which making shall be borne by the applicant, and shall immediately forward to each of such other state agencies a copy of such parts of the application as are relevant to its jurisdiction. Upon receipt of such a copy, each of such other state agencies shall immediately conduct a preliminary review thereof to ascertain if the application contains sufficient information for its purposes. If the application does not contain sufficient information for the purposes of any of such other state agencies, that agency shall, in writing, immediately notify the committee of that fact and specify what information the applicant must supply; thereupon the committee shall provide the applicant with a copy of such notification and specification. Notwithstanding any other provision of law, for purposes of the time limitations imposed by this section, any application made hereunder shall be deemed not received either by the committee or by any of such other state agencies if the applicant is seasonably notified that it has not supplied sufficient information for any of such other state agencies in accordance with this paragraph.

V. An application hereunder shall also:

(a) Describe in reasonable detail the type and size of each major part of the proposed facility;

(b) Identify both the first choice and any other choices for the site of each major part of the proposed facility;

(c) Describe in reasonable detail the impact of each major part of the proposed facility on the environment of each site proposed; whether as first choice or as any other choice; for such part;

(d) Describe in reasonable detail the applicant's proposals for studying and solving environmental problems;

(e) Describe in reasonable detail the applicant's financial, technical, and managerial capability for construction and operation of the proposed facility;

(f) Document that written notification of the proposed project has been given to the chairman of the board of selectmen, or mayor, which ever is applicable in each community in which the proposed facility is to be located;

(g) Provide such additional information as the committee may require to carry out the purposes of this chapter.

VI. The committee shall decide whether or not to accept the application for filing within 60 days of its receipt. If the committee rejects the application, the applicant may choose to file a new and more complete application.

VII. Notwithstanding any other provision of law, the application shall be in lieu of all applications otherwise requireable by any of such other state agencies.

VIII. Nothing within this chapter shall preclude an agency from imposing its usual statutory fees.

IX. Whenever a petitioner requests, or the committee or commission determines, that a petition should be considered for certification, such consideration shall be made by vote of the committee or commission within 60 days of the date that the petitioner announces an intent to construct the project, and the vote shall be made after public hearing and the opportunity for all parties to present testimony on the need for consideration of the certificate.

162-H:8 Disclosure of Ownership.

I. Any application for a certificate shall be signed and sworn to by the person or executive officer of the association or corporation making such application and shall contain the following information:

(a) Full name and address of the person, association or corporation;

(b) If an association, the names and residences of the members of the association;

(c) If a corporation, the name of the state under which it is incorporated with its principal place of business and the names and addresses of its directors, officers and stockholders;

(d) The location or locations where an applicant is to conduct its business;

(e) A statement of assets and liabilities of the applicant and other relevant financial information of such applicant.

II. The applicant shall immediately inform the committee of any substantive modification to its plan.

162-H:9 Counsel for the Public.

I. Upon notification that an application for a certificate has been received by the committee in accordance with RSA 162-H:7, the attorney general shall appoint an assistant attorney general as a counsel for the public. The counsel shall represent the public in seeking to protect the quality of the environment and in seeking to assure an adequate supply of energy. The counsel shall be accorded all the rights and privileges, and responsibilities of an attorney representing a party in formal action.

II. This section shall not be construed to prevent any person from being heard or represented by counsel; provided, however, the committee may compel consolidation of representation for such persons as have, in the committee's reasonable judgment, substantially identical interests.

162-H:10 Public Hearing; Studies; Rules.

I. Within 30 days after acceptance of an application for a certificate of site and facility, pursuant to RSA 162-H:7, the site evaluation committee and, if a bulk power supply facility application, the commission, shall hold at least one joint public hearing in each county in which the proposed facility is to be located and shall publish a public notice not less than 21 days before said hearing in one or more newspapers having a regular circulation in the county in which the hearing is to be held, describing the nature and location of the proposed facilities. Such public hearings shall be a joint hearings, with representatives of such other agencies as have jurisdiction over the subject matter and shall be deemed to satisfy all initial requirements for public hearings under statutes requiring permits relative to environmental impact. The hearings shall be for public information on the proposed facilities with the applicant presenting the information to the site evaluation committee and to the public. Notwithstanding any other provision of law, the hearing shall be a joint hearing with such other state agencies and shall be in lieu of all hearings otherwise requireable by any of such other state agencies; provided, however, if any of such other state agencies does not otherwise have authority to conduct hearings, it may not join in the hearing under this chapter; provided further, however, the ability or inability of any of such other state

agencies so to join shall not affect the composition of the committee under RSA 162-H:3 nor the ability of any member of the committee to act in accordance with this chapter.

II. Subsequent hearings shall be in the nature of adversary proceedings and may be held in the county or one of the counties in which the proposed facility is to be located or in Concord, New Hampshire, as determined by the site evaluation committee. The committee shall give adequate public notice of the time and place of each subsequent session.

III. The site evaluation committee and, if a bulk power supply facility application, the commission, shall consider and weigh all evidence presented at public hearings and shall consider and weigh written information and reports submitted to it by members of the public before, during, and subsequent to public hearings. The committee and the commission shall grant free access to records and reports in its files to members of the public during normal working hours and shall permit copies of such records and reports to be made by interested members of the public at their expense.

IV. The site evaluation committee and, if a bulk power supply facility application, the commission, shall require such information from the applicant as it deems necessary to assist the conduct of hearings and any investigation or studies it may undertake and in the determination of the terms and conditions of any certificate under consideration.

V. The site evaluation committee and, if a bulk power supply facility application, the commission, shall jointly conduct such reasonable studies and investigations as they deem necessary or appropriate to carry out the purposes of this chapter and may employ a consultant or consultants, legal counsel and other staff in furtherance of the duties imposed by this chapter, the cost of which shall be borne by the applicant in such amount as may be approved by the committee in the case of an energy facility or the committee and the commission in the case of a bulk power supply facility. The site evaluation committee, the commission, and counsel for the public as provided for by RSA 162-H:9 are further authorized to assess the applicant for all travel and related expenses associated with the processing of an application under this chapter.

VI. The site evaluation committee and, if a bulk power supply facility application, the commission, shall jointly issue such rules and regulations, pursuant to RSA 541-A, after public notice and hearing, as may from time to time be required to carry out the provisions of this chapter.

Decisions made pursuant to this chapter by the site evaluation committee, or by any other state agency, shall be reviewable in accordance with RSA 541.

I. Whenever the committee determines that any term or condition of any certificate issued hereunder is being violated, it shall, in writing, notify the person holding such certificate of the specific violation and order such person immediately to terminate such violation. If, 15 days after receipt of such order, such person has failed or neglected to terminate such violation, the committee may suspend such person's certificate; provided, however, except for emergencies, prior to any such suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing thereon.

II. The committee may suspend a person's certificate if the committee determines that such person has made a material misrepresentation in the application or in the supplemental or additional statements of fact or studies required of the applicant, or if the committee determines that such person has violated the provisions of this chapter or regulations issued hereunder; provided, however, except for emergencies, prior to any such suspension, the committee shall give written notice of its consideration of suspension and of its reasons therefor and shall provide opportunity for a prompt hearing thereon.

III. The committee may revoke any certificate that is suspended hereunder after the person holding such suspended certificate has been given at least 90 days written notice of the committee's consideration of revocation and of its reasons therefor and has been provided opportunity for a full hearing thereon.

I. The superior court in term time or in vacation may enjoin any act in violation of this chapter.

II. Any construction or operation of bulk power supply or energy facilities in violation of this chapter, or in material violation of the terms of a certificate issued hereunder, may result in an assessment by the superior court of civil damages not to exceed \$10,000 for each day of such violation.

III. Whoever commits any willful violation of any provision of this chapter shall be guilty of a misdemeanor of a natural person, or guilty of a felony if any other person.

If any provision or clause of this chapter, or application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions of applications of the chapter which can be given effect without the invalid provisions or application, and to this end, the provisions of this chapter are declared to be severable. Each section of this chapter shall be separable from all other sections hereof and the nullification of any section of this chapter shall have no effect upon the remaining sections of this chapter.

Complete verbatim records shall be kept by the committee of all hearings, and records of all other actions, proceedings and correspondence of the committee shall be maintained, all of which records shall be open to the public inspection as provided for under RSA 91-A.

I. If the site evaluation committee at any time during its deliberations relative to an application for a certificate deems it to be in the public interest, it may temporarily suspend its deliberations.

II. The committee may temporarily suspend its deliberations and request the commission to exercise its duties under this chapter. After deliberations have been so suspended and the commission finds that the requirements of that chapter have been met and so notifies the site evaluation committee, the site evaluation committee shall resume its deliberations under this chapter.

Upon request of a community in which the proposed facility is to be located, or upon request of the committee, the applicant shall provide informational meetings to inform the public of the proposed project.

I. The committee shall incorporate in any certificate or findings issued hereunder such terms and conditions as may be specified to the committee by any of such other state agencies as have jurisdiction, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility; provided, however, the committee shall not issue any certificate hereunder if any of such other state agencies denies authorization for the proposed activity over which it has jurisdiction. The denial of any such

authorization shall be based on the record and explained in reasonable detail by the denying agency. Notwithstanding any other provision of law, each of such other state agencies shall make and submit to the committee a final decision on such parts of the application as relates to its jurisdiction not later than 8 months after acceptance of the application. Notwithstanding any other provision of this section or this chapter, each of such other state agencies shall retain all of its powers and duties of enforcement.

II. Findings by the site evaluation committee shall be based on the record and shall be made by a majority vote of a full committee whether or not the full committee is present for voting. A majority vote of the site evaluation committee shall be conclusive on all questions of siting, land use, air and water quality. The public utilities commission shall cast a single vote in these findings.

III. The committee and, in the case of a bulk power certificate, the commission may consult with interested regional agencies and agencies of border states in the consideration of such certificates.

IV. In the case of energy facilities, the site evaluation committee, after having considered available alternatives and fully reviewed the environmental impact of the site or route, and other relevant factors bearing on whether the objectives of this chapter would be best served by the issuance of the certificate, must find that the site and facility:

(a) Applicant has adequate financial, technical, and managerial capability to assure construction and operation of the facility in continuing compliance with the terms and conditions of the certificate.

(b) Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal governing bodies.

(c) Will not have an unreasonable adverse effect on esthetics, historic sites, air and water quality, the natural environment, and public health and safety.

V. In the case of bulk power supply facilities, the commission shall issue or deny a certificate of site and facility. The commission shall issue a certificate only after it has reasonable assurance that all applicable state standards and requirements shall be met by the applicant. The commission shall incorporate in its certificate such lawful terms as may be supplied to it by the site evaluation committee and those state agencies having permit or license granting responsibilities under state law. The commission shall be bound by the findings

of the site evaluation committee under paragraph I. In its decision the commission must find the construction of the facility:

(a) Is required to meet the present and future need for electricity. A finding that the construction of the facility is required to meet the present and future need for electricity may be based upon a determination of need for capacity to generate electricity, need for a greater supply of electricity, or need for more economic, reliable, or otherwise improved sources of either capacity or energy. The commission shall consider economic factors when considering whether or not the facility will meet the present or future needs for electricity;

(b) Will not adversely affect system stability and reliability factors.

VI. A certificate of site and facility may contain such reasonable terms and conditions as it deems necessary and may provide for such reasonable monitoring procedures as may be necessary. Such certificates, when issued shall be final and subject only to judicial review.

VII. The committee may condition the certificate upon the results of required federal agency studies whose study period exceeds the application period.

162-H:19 Plans

Each utility shall prepare annually its long-range plans for bulk power supply facilities pursuant to guidelines established by the public utilities commission. Such guidelines shall be approved by the site evaluation committee which may make such modifications as it may deem necessary within the purposes of this chapter. These plans may be part of a regional plan and shall:

I. Describe the general location, size and type of all bulk power supply facilities to be owned or operated by such utility and whose construction is projected to commence during the ensuing 10 years or during such longer period, but not to exceed a total of 15 years, as the commission may determine to be necessary, together with an identification of all existing facilities to be removed from utility serviced through such period or upon completion of construction of such bulk power supply facilities.

II. Identify the location of tentative sites for the construction of future power plants as defined in RSA 162-H:2,V, including an inventory of sites for all plants on which construction may be commenced in the succeeding 5 years, and the general location of the routes of transmission lines as defined in RSA 162-H:2,V and indicate the relationship of the planned

sites, routes, and facilities thereon to the environment, and describe generally how potential adverse effects will be lessened. Such sites shall be indicated in relation to the location of existing plants and tentative sites planned or announced by utilities within a 200 mile radius of the site.

III. Reflect and describe such utility's efforts to involve environmental protection and land-use planning agencies in their planning agencies in their planning process so as to identify environmental problems at the earliest possible stage in the planning process.

IV. Supply additional information as the site evaluation committee, upon the advice of interested state and federal agencies, may from time to time prescribe to carry out the purposes of this chapter.

V. Each utility shall give initial public notice of its plans referred to in paragraph I by filing annually a copy of such plans, together with its projections of demand for electricity that the facilities would meet, with the public utilities commission and with such other affected state and local governmental authorities and citizens' environmental protection and resource planning groups requesting such plans.

162-H:20 Review; Hearing.

Upon receipt of plans referred to in RSA 162-H:20, the public utilities commission shall notify the site evaluation committee which shall:

I. Review and comment on the long-range plans and make information contained therein readily available to the general public and interested state and local governmental entities;

II. Compile and publish a description of the proposed power plant sites and general locations of transmission line routes within the state as identified in the long-range plans, identifying the location of such sites and the possible year when construction is expected to commence and to make such information readily available to the public, to newspaper regularly circulated within the area affected by the proposed site, and to interested state and local governmental entities. The duties imposed by this paragraph may be delegated to the public utilities commission, and all documents filed under this chapter shall be held in the offices of the public utilities commission.